

## **REMARKS**

In the Office Action dated July 1, 2005, claims 1-4 were rejected under 35 U.S.C. §102(b) as being anticipated by Mick et al. Claims 1, 3 and 4 were rejected under 35 U.S.C. §102(b) as being anticipated by Japanese Application 61-284257 (Kazuyuki).

In response, independent claim 1 has been amended to make clear that there is only one measurement chamber associated with the tube piece. Claim 1 already stated that each of the first port, the second port, and the third port are all connected to "said" measurement chamber, making it clear that each of those ports is connected to the same measurement chamber. Claim 1 also been amended to make clear that each of the first port, the second port, and the third port is not only connected to the (same) measurement chamber, but also each of those ports is permanently open to that measurement chamber.

In the Mick et al. reference, as can best be seen from Figure 2, the various passages are valved, and therefore no passage is permanently open to any other passage. The Mick et al. reference, therefore, does not anticipate amended claim 1, nor any of the claims depending therefrom.

In the Kazuyuki reference, as shown generally in Figure 1, and as shown in detail in Figures 6, 7 and 8, the four tube connections 15, 17, 19 and 21 lead respectively to different mixing chambers 13a and 13b. As is apparent from Figures 6, 7 and 8, mixing chamber 113a does not communicate with mixing chamber 13b. Therefore, the various ports (however they are characterized in the Kazuyuki reference) do not all communicate with the same chamber, as set forth in amended

claim 1. The Kazuyuki reference, therefore, does not anticipate claim 1 nor any of the claims depending therefrom.

Additionally, dependent claims 2 and 4 have been amended to make clear, consistently with the amendments to claim 1, that the flow paths permanently exist in the arrangement, meaning that they are not temporarily created by the actuation of valves or other movable parts. It is the *structure* of the respective flowpaths that establish the gas flows described in claims 2 and 4.

In general, the subject matter of all of the claims of the present application allows for a very simple and reliable structure, with no moving parts, that nevertheless allows different gas flow paths to be created to the same measurement chamber depending on the flow of gas that happens to exist at the tube piece at any given time. Even though the flows entering and leaving the tube piece will change during the inspiration phase and the expiration phase of a respiratory cycle, no moving parts are needed in the arrangement disclosed and claimed in the present application to ensure that the intended gas will reach the measurement chamber. No such arrangement is disclosed or suggested in either of the Mick et al. or the Kazuyuki references, nor in any of the other references of record.

New claim 5 has been added to state that the measurement chamber is cylindrical, as is readily apparent from Figures 1 and 2 as originally filed.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

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